

Town of Amherst
Zoning Board of Appeals - Appeal

DECISION

Applicant: Ryan Karb, PO Box 278 Amherst MA, 01002

Owner: Onesta Properties, LLC, 6 University Drive, Amherst MA, 01002

Date application filed with the Town Clerk: August 14, 2014

Nature of request: To appeal the Notice of Violation dated July 16, 2014

Address: 110 Logtown Road (Map 18D, Parcel 63, R-N Zoning District)

Legal notice: Published on August 27, 2014 and September 3, 2014 in the Daily Hampshire Gazette and sent to abutters on August 27, 2014

Board members: Eric Beal, Tom Ehrgood, Keith Langsdale

Staff members: Jeff Bagg, Senior Planner, Rob Morra, Building Commissioner

Submissions:

- Application form, filed with the Town Clerk on August 14, 2014
- Notice of Violation, dated July 16, 2014
- Letter from property owner, dated August 6, 2014
- Applicant letter, dated August 6, 2014
- IRS 501C3 letter #947
- Management Plan form
- Parking Plan
- Lease agreement
- Letter from Wesley Autio, Director of Stockbridge School of Agriculture, dated August 7, 2014
- Letter from Katie Campbell-Nelson, Instructor, UMass Extension & Stockbridge School of Agriculture, dated August 6, 2014
- Letter from Old Friends Farm, dated
- Intern Curriculum document
- Internship Training document
- Leadership Development document
- Memorandum, dated October 14, 2014, from Michael Pill of Green, Miles Lipton, LLP
- Chapter 4 from the Handbook of Massachusetts Land Use and Planning Law, 3rd Edition
- Article, Regis V. Weston and Beyond: The Burdens of Landowners and Municipalities Under the Dover Amendment, dated March 14, 2013
- Commissioner of Code Inspection of Worcester V. Worcester Dynamy, Inc.
- Harbor Schools, Inc. & Others V. Board of Appeals of Haverhill
- Copy of Gazette article, dated October 23, 2014
- Signed letter of extension, filed with the Town Clerk on November 14, 2014

Public Hearing: September 11, 2014

The Board received an email from the applicant, dated September 11, 2014 requesting a continuation of the public hearing to October 23, 2014 or later, in order for his attorney additional time to review the matter.

Mr. Beal MOVED to continue the public hearing to October 23, 2014. Mr. Ehrgood SECONDED the motion and the Board VOTED unanimously to continue the public hearing.

Public Hearing: October 23, 2014

Mr. Beal began by reading Chapter 40A, Section 14, which identifies the appeals process and states that:

In exercising the powers granted by this section, a board of appeals may, in conformity with provision of this chapter, make orders or decisions, reverse or affirm in whole or in part, or modify any order or decision, and to that end shall have all powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

Mr. Beal then reviewed the Zoning Board of Appeals Rules and Regulations which identify that in cases of an appeal, the Building Commissioner may first provide information on the matter, followed by information from the appellant and public comment.

The Building Commissioner stated the following:

- On July 9, 2014, Inspection Services received a complaint from one of the parents of a tenant regarding questions about the safety of the unit. The owner of the property was contacted and an inspection occurred on July 16, 2014. The inspection included the Town's Code Enforcement Officer, the owner and Mr. Karb.
- Inspection Services found nine occupants in the main floor and basement. Of particular concern was the basement which did not have emergency windows in the rooms being used as bedrooms or proper smoke detection.
- Following the site inspection, a review of Town Assessor's records identified that the main floor was approximately 960 square feet with three bedrooms. No permit was found to create the bedrooms in the basement.
- Based on the site inspection the Notice of Violation was issued to the property owner on July 16th, 2014.
- The Notice of Violation was issued in as part of an open conversation with the owner and explaining the process. At this time Mr. Karb was going to further explain the nature of the non-profit status of his organization and move forward with an appeal.
- A week after the Notice of Violation, the owner informed Inspection Services that the applicant was aggrieved by the decision and discussions began about the appeal process. Initially, the applicant was going to claim protection based on the use of the property for agricultural purposes. However, after obtaining certain legal advice, the applicant determined that the exemption would be based on the educational use of the property.

- During this time the owner informed Inspection Services that the bedrooms in the basement would not be used and that the applicant was going to restrict tenants from the basement until the matter is resolved.
- Soon after, the applicant began the process of filing the appeal with the Planning Department. After the material was filed on August 14, 2014, Planning Department staff informed the applicant that additional information was needed for the Town and ZBA to consider the complex nature of the non-profit exemptions available under Chapter 40A, Section 3.
- Early last week a packet from Attorney Michael Pill was provided. This completed the packet in support of the appeal.
- Typically with this type of appeal it starts with a building permit, although in this case, the use was already under way and started with a Notice of Violation. Inspection Services would first determine if the proposed use is exempt under Chapter 40A, Section 3. Then the use would be evaluated to determine if any building or site changes would be needed to comply with the Zoning Bylaw. Inspection Services was not in the position to do this until all the information was submitted.
- After the initial review of the complete packet from Attorney Pill there were some questions related to the limited educational use of the property and its location remote from the farm and other agricultural activities. The other questions related to whether the number of occupants would be regulated by the Town's Zoning Bylaw limit of no more than four unrelated individuals in a single dwelling unit. After consultation with Town Counsel, Inspection Services believes that the use is exempt from the Zoning Bylaw requirements.

Mr. Ehrgood asked the Building Commissioner if he had the authority to deal with the life safety issues outside of the Zoning Bylaw. Mr. Morra stated that he does have that authority and discussed the required change with the owner. During this time in the process the owner agreed to not use the basement of the dwelling.

Mr. Morra explained that if the ZBA finds the use to be exempt, it would be regulated through Site Plan Review by the Planning Board. The changes to the property would include altering and enlarging several windows to meet egress requirements as well potential requirements for parking. If approved by the Planning Board, the property would ultimately be granted a Certificate of Occupancy for a non-profit educational use.

Mr. Ehrgood asked what issues the Planning Board would regulate? Mr. Morra identified that Chapter 40A allows reasonable regulation on height, bulk, mass, and parking. He noted that parking would be reviewed in this case along with the exterior changes proposed.

Mr. Ehrgood asked if the four unrelated limit would apply? Mr. Morra noted that this is part of the ZBA decision and it was the basis for the Notice of Violation.

The Board received a presentation from Attorney Pill. Mr. Pill stated the following:

- He appreciated the detailed overview of the process by the Building Commissioner.
- If the ZBA determines the use to be exempt, things will be fine. If the Board determines the contrary, he will appeal the decision and challenge the validity of Town's four unrelated bylaw in Superior Court.

The Board noted that they are required to determine whether the use of the property is predominantly for an educational purpose and asked the applicant to describe the activities at the house.

Mr. Karb described some of the educational activities that occur at the house and read excerpts from the submitted information:

- The first week of an internship begins with activities to improve group dynamics. This involves activity at the farm and at the dwelling and includes creating group vernacular, understanding individual expectations, and consensus decision making.
- The activities at the house provide an experience with living in a group, including cooking, cleaning, and responsibility for certain daily tasks. It also provides the interns an opportunity to discuss concepts in more depth than is allowed when on the farm.
- The internship training is intended to allow for intellectual and social engagement. The education and training offered does not differentiate between job training and higher education, it bridges the two.
- The internship offers leadership development for crew leaders. This involves specific training in work procedures, educational discussions, and preparation of lessons.
- The program includes presentations and guest speakers at the house, on topics related to farming.

The Board discussed the use of the property when interns are not present. Specifically, the Board noted from the submitted materials that crew leaders may live in the house beginning in May with interns living there from June to September. Mr. Karb explained that they do not own the house and they made the connection with Onesta Properties who let them use the dwelling while it was not occupied in the summer. Mr. Karb explained that he wasn't sure how the house was used when it wasn't occupied by interns from Many Hands Farm. The Board confirmed that no one is living in the house currently.

The Board asked the owner about how the property will be used if not occupied by Many Hands Farm. Mr. O'Rourke stated that no one is currently renting it while this process is underway. Last summer, the house was rented to Many Hands Farm. Next year, he imagined that the house would be rented to Many Hands Farm for the year and sublet during the months when the interns are not living there.

The Board noted that this schedule corresponds with the typical rental period for a student and expressed concern with how the four unrelated limit would be enforced during the times that the dwelling is not occupied by Many Hands Farm.

Mr. Pill stated that he understands that the exemption from the Zoning Bylaw would apply only when the dwelling is occupied by interns affiliated with Many Hands Farm. He added that he believes that if the use is determined to be an educational use it would be exempt from the four unrelated bylaw limit as it is not one of the areas allowed to be regulated under Chapter 40A, Section 3.

Mr. Ehrgood asked whether a use can be exempt if it is only used for three months of the year. Mr. Morra stated that it could be exempt, and while it does create some challenges in determining when the property is being used by Many Hands Farm and occupied by more than four people and when it would be rented to others and be subject to the limit of four unrelated individuals. He added that the owner would need to regulate this carefully but noted that Inspections Services has found the owner to be open and responsive to the Town.

The Board discussed the improvements necessary to allow nine people to live in the house and what would happen to that space if it was not occupied by Many Hands Farm. Mr. Pill stated that the physical layout is less important to this question and is why no floor plans or other information was submitted. He stated that if the house was used by a group other than Many Hands Farm some of the bedrooms could not be used as bedrooms nor could the house be occupied by more than four unrelated individuals.

Mr. Ehrgood asked whether there have been any other code or nuisance violations, such as noise complaints. Mr. Morra stated there have not been any complaints filed about this property. Mr. O'Rourke stated that his experience renting to Many Hands Farm interns has been that they are fantastic tenants who are courteous to his staff. Mr. Karb stated that they have made it a point to introduce themselves to the neighbors and have often brought them produce from the farm.

Mr. Ehrgood asked about the demand for interns. Mr. Karb explained that there are more applicants than openings available and he hopes to expand the program in the future.

The Board discussed the total number of occupants. Mr. Beal expressed concern about the number of people who could be in the house if they are exempt from the four unrelated limit. The Board noted that the property is located in the Neighborhood Residence District where the minimum lot area for a single family dwelling is 20,000 square feet. The property at 110 Logtown is 24,650 square feet in size. It was noted that this is presumed to be related to the density of people on a single property and that a family is not limited, but unrelated individuals is limited to four per unit or property. Mr. Pill stated that an exemption from the Zoning Bylaw renders the four unrelated limit to not be applicable. He explained that other codes, such as the Building Code, sanitation code, and fire codes all still apply. The Board asked Mr. Morra what the occupancy would be based on the other applicable codes. Mr. Morra noted that it is primarily the sanitation code which limits occupancy. He gave an approximate calculation that the maximum occupancy of the building based on the sanitary code and a 960 square feet main floor and 480 square foot basement, the maximum occupancy might be 13 or 14 people. Mr. Morra noted that the Fire Code does require certain fire protection for dwellings occupied by more than six individuals.

The Board noted that parking and associated traffic would need to be addressed by the Planning Board. Mr. Karb stated that interns are not allowed to have cars.

The following members of the public spoke regarding the application:

- Laura Ricard, 5 James Street, explained that she lives next to the farm and for the past five years has been very impressed and excited with the program and the educational activity occurring on the farm. She has seen and heard about the positive impact of the internship on the individuals.
- Katie Campbell Nelson, a teacher for the Stockbridge School of Agriculture at UMass, stated that she has been one of the speakers to talk at the house and been there for dinner. She has seen the leadership and high quality of the education occurring at the house. Some of the students of the Stockbridge School have received credits for participating in the Many Hands Farm internship program.
- Michael Garjian, Easthampton, explained he was former resident of Amherst with a daughter in the Stockbridge School. He urged the Board to do whatever it takes to support local agriculture.
- Casey Steinberg, co-owner of Old Friends Farm in Amherst, stated that he has hired interns from Many Hands Farm for many years and have experienced there well trained people. He attributes this to the training and experiences gained by living in a community building setting. Those experiences happen both on and off the farm.
- Hannah Helfner, a student at UMass, stated that she was an intern for Many Hands Farm last summer and that the experience changed her life in a positive way and ended up changing her course of study to agriculture after the experience. She stated that she learned a lot about group dynamics from living in a group setting and that it was an important component of the internship.
- Sarah Voiland, co-owner of Red Fire Farm in Granby, stated that they have hired some of the outgoing interns and found them to have great leadership skills. She attributes that to the training program offered by the internship.
- Sam Bavelock, 16 North Hadley Road, stated that he was an intern last summer and explained that the program helped him to determine his course of study, taught a lot about agriculture and the importance of working in a group dynamic. He stated that as a result of the program he hopes to apply to be a crew leader in the future.
- Carol Lewis, 21 Ward Street, stated that she joined the Many Hands Farm CSA membership and supports this effort to provide an educational opportunity in Amherst. She encouraged the Board to allow the use of the property as it will make Amherst a better community.
- Tobin Porter-brown, 301 East Hadley Road, stated that he is the farm manager at the Book and Plow Farm at Amherst College. He stated that he has been an educator and has run workshops with Many Hands Farms interns. He stated that there is a lot of value to the educational opportunities the interns get during cooking and eating in the residential setting.

The Board noted that it's very rare that at a hearing everyone is in support of the request and that it says a lot about your program.

The Board discussed the applicant's offer to extend the 100 day deadline for filing its decision. Attorney Pill agreed to grant the ZBA a 30 day extension beyond the 100 day deadline.

Zoning Board Decision/Findings

The Board finds that Many Hands Farm Corps is a non-profit educational entity. The Board further finds that based on the evidence submitted, which included the curriculum for interns, leadership development and training along with the testimony and letters from professors and employees of UMass and Amherst College, the use of the property by Many Hands Farm for its intern program is predominantly an educational activity and is therefore protected under the Dover Amendment, Chapter 40A, Section 3. Uses at the property that are not "predominantly educational" as determined by the Board in this decision are not protected under the Dover Amendment and must comply with the Zoning Bylaw [Regis College v. Town of Weston, 462 Mass. 280, 287-91 (2012)]

The Board finds that, with respect to the Notice of Violation, the number of occupants who are participants in the educational activity of Many Hands Farm is not limited by Section 12.162. Rather, in this instance, the occupancy is more appropriately regulated by other State and local regulations. This decision is applicable only to the use of this property by Many Hands Farm and its program participants.

The Board finds that this decision applies only to this property, and that the Building Commissioner would decide whether the Dover Amendment applied to a use at another location.

Based on the findings herein, Mr. Beal MOVED to reverse and vacate the Notice of Violation dated July 16, 2014 regarding four unrelated individuals. Mr. Ehrgood seconded the motion.

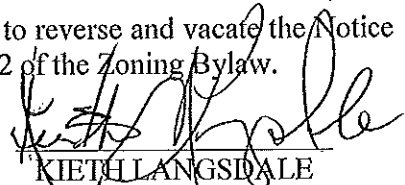
For all of the reasons stated above, the Board VOTED unanimously to reverse and vacate the Notice of Violation regarding the four unrelated provisions of Section 12.162 of the Zoning Bylaw.



ERIC BEAL



TOM EHrgOOD



KIETH LANGSDALE

FILED THIS 19th day of December 2014 at 12:57 pm.
 in the office of the Amherst Town Clerk Chandra G. Breyer
 TWENTY-DAY APPEAL period expires, January 8 2014. 2015
 NOTICE OF DECISION mailed this 19th day of December, 2014
 to the attached list of addresses by Jeffrey R. Byn, for the Board.
 CERTIFICATE OF NO APPEAL issued this _____ day of _____, 2014.
 NOTICE OF PERMIT or Variance filed this _____ day of _____, 2014,
 in the Hampshire County Registry of Deeds.

**BOARD OF APPEALS
AMHERST, MASSACHUSETTS
RECORD OF APPEALS AND DECISION RENDERED**

Petition of Ryan Karb

For Appeal notice of violation dated July 16, 2014

On the premises of 110 Logtown Road
At or on Map 18D, Parcel 63, R-N

NOTICE of hearing as follows mailed (date) August 27, 2014
to attached list of addresses and published in the Daily Hampshire Gazette
dated August 27, 2014 and September 3, 2014

Hearing date and place September 11, 2014 & October 23, 2014 (Town Hall)

LEGAL NOTICE The Amherst Zoning Board of Appeals will meet on *Thursday, September 11, 2014*, at 6:30 P.M. in the Town Room, Town Hall, to conduct the following business: PUBLIC HEARING: ZBA FY2015-00009 - Andrea Tulenko & Jeffrey Catlin - For a Special Permit to structurally alter and enlarge a pre-existing non-conforming (as to rear yard setback) detached garage by adding a second floor, at 124 High Street (Map 11D, Parcel 124, R-G Zoning District) ZBA FY2015-00010 - Ryan Karb - To appeal a Notice of Violation dated July 16, 2014, that the dwelling is occupied by more than four unrelated individuals, under Section 10.2 of the Zoning Bylaw, at 110 Logtown Road (Map 18D, Parcel 63, R-N Zoning District) ERIC BEAL, CHAIR AMHERST ZONING BOARD OF APPEALS August 27, September 3	3324871
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SITTING BOARD and VOTE TAKEN:

To reverse and vacate the Notice of Violation dated July 16, 2014 regarding four unrelated individuals

Eric Beal - Yes Tom Ehrgood - Yes Keith Langsdale - Yes

Town of Amherst Abutter List

<i>Parcel ID</i>	<i>Parcel Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>City/St/Zip</i>
18D-37	BELCHERTOWN RD	TOWN OF AMHERST		TOWN HALL	AMHERST, MA 01002
18A-43	422 BELCHERTOWN RD	GPT-RG AMHERST LLC	C/O EQR-RE TAX DEPARTMENT	PO BOX 87407	CHICAGO, IL 60680
18D-34	502 BELCHERTOWN RD	ZLOGAR, KAY		502 BELCHERTOWN RD	AMHERST, MA 01002
18D-14	17 CURTIS PL	VULLO, VINCENT J & COHEN, JACQUELINE	C/O SALGO, CHRISTINA G	90 GLENDALE RD	AMHERST, MA 01002
18D-15	41 CURTIS PL	VULLO, VINCENT J	COHEN, JACQUELINE	12 FRANCINE RD	ACTON, MA 01720
18D-58	1 EDGEHILL PL	COMM PROPERTIES LLC	C/O PIPELINE PROPERTIES INC	6 UNIVERSITY DR	AMHERST, MA 01002
18D-60	2 EDGEHILL PL	CARBONE, VENANZIO		31 TALBOT FARM DR	MENDON, MA 01756
18D-56	4 EDGEHILL PL	RUSSAVAGE, JOSEPH E & ABBOTT, MARY E		4 EDGEHILL PL	AMHERST, MA 01002
18D-68	5 EDGEHILL PL	LIU, JING & WANG, HONGQI		5 EDGEHILL PL	Amherst, MA 01002
18D-67	9 EDGEHILL PL	MOUSSA, MICHAEL E & JEAN CLAUDE		81 LITTLE POND RD	NORTHBOROUGH, MA 01532
18D-30	HARKNESS RD	TOWN OF AMHERST CONSERV COMM		TOWN HALL	AMHERST, MA 01002
18D-6	87 LOGTOWN RD	WALLACE, REX E	RYAN, MAUREEN B	87 LOGTOWN RD	AMHERST, MA 01002
18D-9	96 LOGTOWN RD	TRAN, JOSEPH & PHAM, HONG T		96 LOGTOWN RD	AMHERST, MA 01002
18D-13	97 LOGTOWN RD	LOCOCO, MICHAEL S		97 LOGTOWN RD	AMHERST, MA 01002

<i>Parcel ID</i>	<i>Parcel Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>City/St/Zip</i>
18D-24	106 LOGTOWN RD	HAZZARD, RUTH V		235A PINE ST	AMHERST, MA 01002
18D-63	110 LOGTOWN RD	ONESTA PROPERTIES LLC		6 UNIVERSITY DR SUITE 206-215	AMHERST, MA 01002
18D-61	111 LOGTOWN RD	CABRERA, LUISA C		111 LOGTOWN RD	AMHERST, MA 01002
18D-74	114 LOGTOWN RD	TENG, LAR L		114 LOGTOWN RD	AMHERST, MA 01002
18D-75	116 LOGTOWN RD	WEST, RICHARD A & VACHULA, CATHERINE M		116 LOGTOWN RD	AMHERST, MA 01002
18D-73	120-2 LOGTOWN RD	ALERS, MIRIAM & SANTO I		120-2 LOGTOWN RD	AMHERST, MA 01002
18B-46	STONY HILL RD	ECHO HILL SOUTH ASSOC INC		P.O. BOX 3463	AMHERST, MA 01004-3463